

# Organizational Charts

Exhibit 5.1

## Montana Department of Labor & Industry

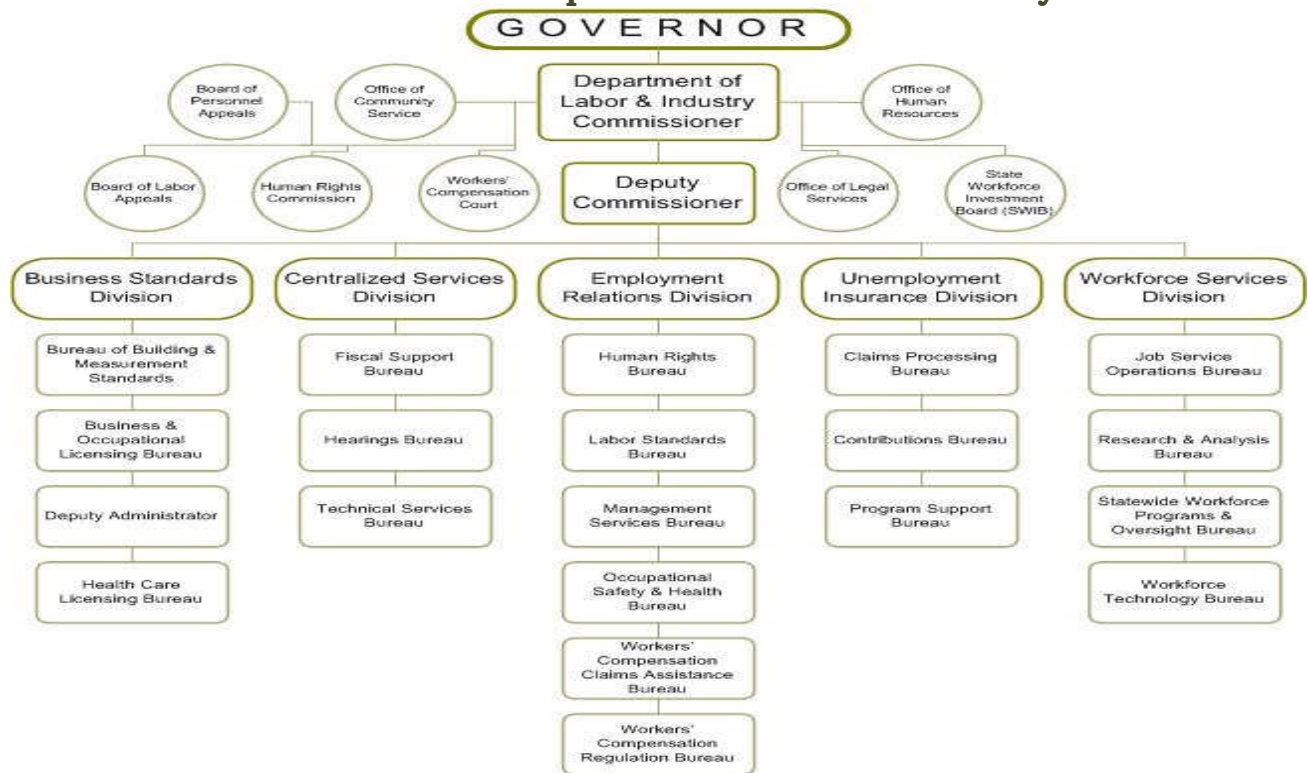


Exhibit 5.2

## Employment Relations Division



## Workers' Compensation Assessments as Expended

The administration of the Workers' Compensation and Occupational Disease Acts and the various occupational safety laws is funded by an assessment to Plan 1 (self insured employers), Plan 2 (private insurance carriers), and Plan 3 (Montana State Fund). Section 39-71-201, MCA, requires the administrative assessment to be three percent of benefits paid during the preceding calendar year for injuries covered under the Workers' Compensation Act and the Occupational Disease Act, without regard to the application of any deductible, whether the employer or the insurer pays the losses. Benefits included in the calculation are: (1) compensation benefits paid and (2) medical benefits paid (except payments in excess of \$200,000 per occurrence, which are exempt from the assessment).

### DLI functions funded by the administrative assessments

- Legal functions of the Workers' Compensation Court and the Hearings and Legal Bureaus;
- Administration of the Employment Relations Division, including the Workers' Compensation Database;
- Claims management, data analysis, rehabilitation panels, mediation and administration functions of the Claims Assistance Bureau;
- Medical regulation, self-insurance, carrier compliance, Professional Employer Organizations, Managed Care Organizations and administration functions of the Workers' Compensation Regulation Bureau; and
- Occupational safety statistics, mandatory inspections, on-site consultation grant match, mining inspection, mine training grant match and safety culture functions of the Occupational Safety and Health Bureau.

**Exhibit 5.3**  
**Workers' Compensation Assessments as Expended**  
**By Fiscal Year of Expenditure**

| FY01        | FY02        | FY03        | FY04        | FY05        |
|-------------|-------------|-------------|-------------|-------------|
| \$3,950,660 | \$4,387,058 | \$4,512,300 | \$4,584,468 | \$4,735,449 |

## Subsequent Injury Fund

The Subsequent Injury Fund (SIF) was established by legislation passed in 1973. The purpose of the SIF is to assist individuals with impairments to obtain employment by offering a financial incentive to employers for hiring SIF-certified individuals. Many states have similar funds called either subsequent or second injury funds. Montana's program is funded through an annual assessment on Plan 1, Plan 2 and Plan 3 via direct bill or via a surcharge.

The law defines "person with a disability" as a person who has a medically certifiable permanent impairment that is a substantial obstacle to obtaining employment or re-employment. Also taken into account are such factors as the person's age, education, training, experience and employment rejections.

The SIF program reduces the liability of the employer by placing a limit on the amount an employer, or the employer's insurer, will have to pay if the worker becomes injured or re-injured on the job. When that limit is reached, SIF assumes liability for the claim. If a certified worker does become injured on the job, the worker remains entitled to all benefits due under the Workers' Compensation and Occupational Disease Acts.

There were 208 new SIF certifications during FY05 bringing the total to 3,610 SIF-certified individuals in the state of Montana.

The assessment surcharge is based on a percentage of the compensation and medical benefits paid in Montana by each insurance plan in the preceding calendar year. The rate is set by the ERD based on the total amount of paid losses reimbursed by the fund in the preceding calendar year and the expenses of administration, less other income.

### Exhibit 5.4 SIF Payments and Dollars Assessed By Plan Type<sup>1</sup> and Calendar/Fiscal Years

| Plan Type <sup>1</sup> | FY01            |                 | FY02            |                 | FY03             |                  | FY04             |                 | FY05                       |                     |
|------------------------|-----------------|-----------------|-----------------|-----------------|------------------|------------------|------------------|-----------------|----------------------------|---------------------|
|                        | Payments CY99   | Assessment FY01 | Payments CY00   | Assessment FY02 | Payments CY01    | Assessment FY03  | Payments CY02    | Assessment FY04 | Payments FY04 <sup>2</sup> | Assessment FY05     |
| Plan 1                 | 42,200          | 0               | 18,819          | 0               | 180,361          | 99,700           | 62,115           | 0               | 55,417                     | 42,792 <sup>3</sup> |
| Plan 2                 | 16,195          | 0               | 9,580           | 0               | 43,294           | 19,854           | 135,513          | 14,857          | 116,938                    | 82,832              |
| Plan 3                 | 549             | 0               | 170             | 0               | 12,461           | 381              | 94,312           | 48,642          | 204                        | 151,763             |
| <b>Total</b>           | <b>\$58,944</b> | <b>\$0</b>      | <b>\$28,569</b> | <b>\$0</b>      | <b>\$236,116</b> | <b>\$119,935</b> | <b>\$291,940</b> | <b>\$63,499</b> | <b>\$172,559</b>           | <b>\$234,595</b>    |

**Note:**

<sup>1</sup>Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance and Plan 3 – Montana State Fund

<sup>2</sup>Change from Calendar Year to Fiscal Year basis (39-71-915, MCA)

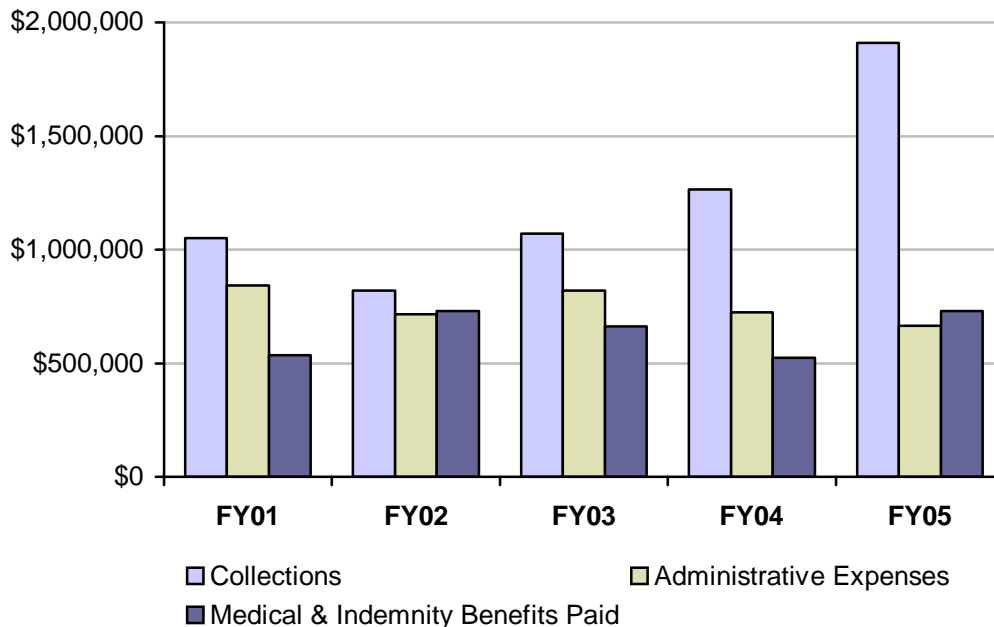
<sup>3</sup>Previous year carryover credit from Plan 1 reduced the actual Assessment to zero

## Uninsured Employers' Fund

The role of the Uninsured Employers' Fund (UEF) is to provide benefits to employees injured on the job while working for an uninsured employer. Another prime role of the UEF is to ensure employers comply with workers' compensation laws so employees are properly covered.

The UEF Unit levies and collects penalties for the time that the employer is uninsured. UEF requires the uninsured employer to pay a penalty to the fund. Penalties can be double the insurance premium that would have been paid by the employer, or \$200, whichever is greater.

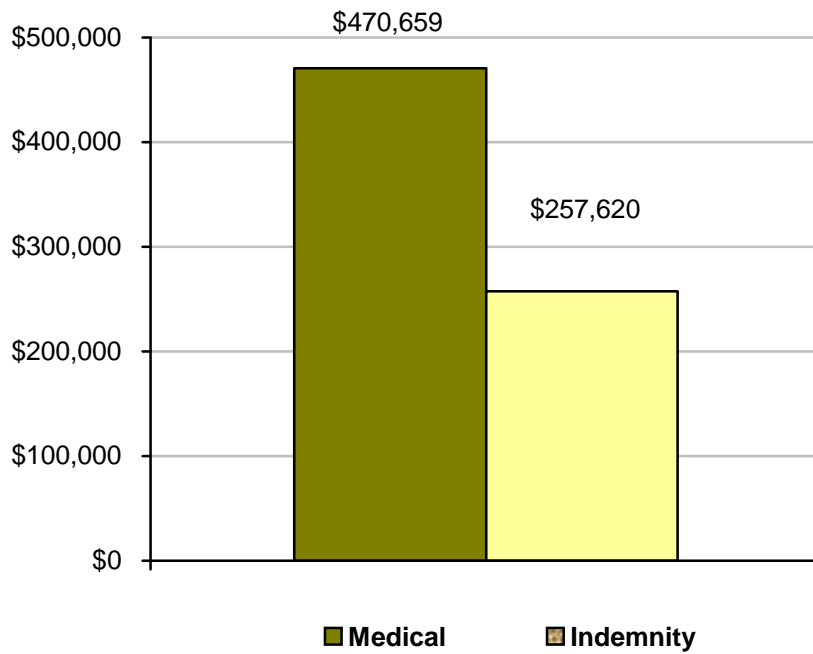
**Exhibit 5.5**  
**Uninsured Employers' Fund**  
**Financial Activity by Fiscal Year**



**Exhibit 5.6**  
**Uninsured Employers' Fund**  
**Financial Activity by Fiscal Year**

|                                   | FY01        | FY02      | FY03        | FY04        | FY05        |
|-----------------------------------|-------------|-----------|-------------|-------------|-------------|
| Collections                       | \$1,051,941 | \$816,467 | \$1,071,012 | \$1,412,419 | \$1,908,717 |
| Administrative Expenses           | \$842,702   | \$716,409 | \$820,898   | \$808,130   | \$665,296   |
| Medical & Indemnity Benefits Paid | \$535,027   | \$582,716 | \$662,301   | \$522,973   | \$728,279   |

**Exhibit 5.7**  
**UEF Medical and Indemnity Payments - FY05**



**Exhibit 5.8**  
**UEF Medical and Indemnity Payments**  
**By Fiscal Year**

|              | FY01             | FY02             | FY03             | FY04             | FY05             |
|--------------|------------------|------------------|------------------|------------------|------------------|
| Medical      | 263,017          | 258,505          | 284,271          | 174,388          | 470,659          |
| Indemnity    | 272,010          | 324,211          | 378,030          | 348,585          | 257,620          |
| <b>Total</b> | <b>\$535,027</b> | <b>\$582,716</b> | <b>\$662,301</b> | <b>\$522,973</b> | <b>\$728,279</b> |

The UEF recorded claims from 90 workers who were injured in FY05 and whose employers were uninsured.

## Occupational Safety & Health

The goal of the Occupational Safety and Health Bureau is to reduce the number of worker injuries and illnesses by focusing statewide attention and bureau resources on the various Montana safety and health statutes. This involves mandatory workplace inspections in the public sector, i.e., city, county, state government, schools, etc. In addition, inspections are conducted in coal mines and sand and gravel operations throughout the state. Non-mining private sector employers are subject to federal OSHA requirements with regard to inspection activities; however, the bureau does provide on-site consultations for private employers upon request using a monetary grant from OSHA.

The federal Mine Safety and Health Administration (MSHA) has provided the bureau with a training grant that allows the conducting of required safety training for employers and employees of the small mines. All miners are required to receive “new miner” training in addition to an annual refresher course in mine safety. The mine operators are also assisted in developing acceptable training plans so that their employees recognize hazardous conditions in mining operations.

Montana is one of the few states that require employers to implement an educational-based safety program in each place of employment. The Safety Culture Act also requires employers with more than five employees to have active safety committees.



**Exhibit 5.9**  
**Occupational Safety & Health Activities - FY05**

| Occupational Safety & Health       | Employer Sector |      |      |       |      |         |       |       |       |      |
|------------------------------------|-----------------|------|------|-------|------|---------|-------|-------|-------|------|
|                                    | Public          |      |      |       |      | Private |       |       |       |      |
|                                    | FY01            | FY02 | FY03 | FY04  | FY05 | FY01    | FY02  | FY03  | FY04  | FY05 |
| Mandatory Inspections Performed    | 341             | 223  | 239  | 492   | 422  | --      | --    | --    | --    | --   |
| On-site Inspection Performed       | --              | --   | --   | --    | --   | 142     | 214   | 275   | 270   | 236  |
| Requests for Technical Assistance  | 479             | 363  | 540  | 651   | 513  | 438     | 447   | 758   | 732   | 661  |
| Formal Training Sessions Conducted | 44              | 120  | 48   | --    | --   | 45      | 153   | 72    | --    | --   |
| Workers Trained                    | 1,048           | 811  | 798  | 1,143 | 935  | 598     | 1,097 | 1,702 | 1,002 | 897  |

| Mining Section                                | Coal |      |      |      |      | Sand & Gravel Operations |       |       |       |       |
|---|------|------|------|------|------|--------------------------|-------|-------|-------|-------|
|   | FY01 | FY02 | FY03 | FY04 | FY05 | FY01                     | FY02  | FY03  | FY04  | FY05  |
| Inspections Performed                         | 38   | 31   | 38   | 37   | 39   | 172                      | 174   | 84    | 78    | 59    |
| Mine Training Sessions Conducted              | 19   | 15   | 13   | 9    | 10   | 79                       | 111   | 97    | 122   | 93    |
| Workers Trained                               | 302  | 497  | 200  | 210  | 169  | 1,436                    | 1,512 | 1,679 | 2,468 | 1,728 |
| Coal Mine Foreman Training Sessions Conducted | --   | 3    | 6    | 2    | 1    | --                       | --    | --    | --    | 6     |
| Coal Mine Foremen Trained                     | 9    | 19   | 40   | 28   | 6    | 68                       | --    | --    | --    | --    |

The DLI, Occupational Safety and Health Bureau, has established a schedule of training offered by its *Occupational Safety and Health Training Institute*. Traditionally the Bureau had offered training courses throughout Montana on a reactive basis. This caused scheduling problems, not only for the instructors, but also for those interested in being trained in the various OSHA standards. By setting places, dates and times of training opportunities, the employer and employee can plan schedules well in advance in order to attend. No tuition fee is charged for these courses.

The *Institute* provides basic and advanced training courses in safety and health. Course subject matter includes hazard recognition, state and federal policies and standards and hazard abatement techniques. Courses are designed to build a more effective workforce and to aid in the professional development for Montana employers and employees.

The *Institute* maintains a record of courses successfully completed by each student. These records are useful to both the student and the employer in demonstrating the commitment to a safe and healthy workplace environment. Certificates are issued to those successfully completing the various courses.

| Training Institute | CY05 <sup>1</sup> |
|--------------------|-------------------|
| Training Sessions  | 40                |
| Workers Trained    | 949               |
| Local Focus Groups | CY05              |
| Training Sessions  | 40                |
| Workers Trained    | 676               |

<sup>1</sup> Training Institute and Local Focus Groups are calendar year



## Independent Contractor Exemption Certificates

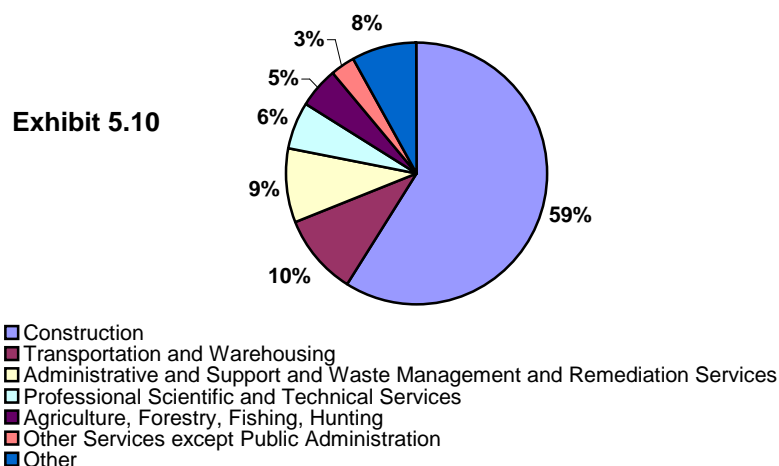
With over a year of research, discussions and committee recommendations occurring on how to deal with the impact of the Supreme Court's *Wild vs. Fregein* decision, the 2005 Montana Legislature strengthened our state's independent contractor (IC) statutes. The new laws became effective on April 28, 2005, and clarify who is actually operating as an IC. Research findings used to write the new IC statutes identified Montana as having the highest percentage (eight percent) of independent contractors as a portion of the state workforce of any state that registers independent contractors. During the public hearings on IC rules, several business owners talked about the problems created by a process that was too relaxed in the way it issued IC exemption certificates, pitting the contract bids of employers who were properly covered with workers' compensation insurance against the contract bids of others not properly covered and who thereby had an unfair competitive advantage. The new IC law should help to resolve these kinds of issues.

The law now requires that independent contractors either have the exemption certificate or purchase workers' compensation insurance coverage on themselves. Failure to obtain the exemption certificate or workers' compensation insurance will result in the state treating the worker as an employee of the hiring agent. Hiring agents will be responsible for claims for injuries or occupational diseases and for payment of premium on the wages of those considered their employees.

For FY05, the department received 7,578 applications. Most applications were in the Construction industry (59%), with the Transportation and Warehousing industry being the next largest (10%). A close third is the Administrative and Support and Waste Management and Remediation Services (9%), followed by Professional Scientific and Technical Services (6%). The graph below shows all exemption applications received by the industry.

Documentation must now be provided along with the application to support that the applicant is independently established in a business. The Department has the authority to investigate the working relationship between an independent contractor and his/her hiring agent. The Department may suspend or revoke an independent contractor exemption certificate. Fines may be assessed against the hiring agent if control is exerted to the extent it creates an employer/employee relationship.

In order to assist the public and others utilizing Independent Contractors to confirm the certification of these contract workers, the Independent Contractor Central Unit now maintains a website listing individuals with IC exemptions in good standing. This website is [www.mtcontractor.com](http://www.mtcontractor.com).



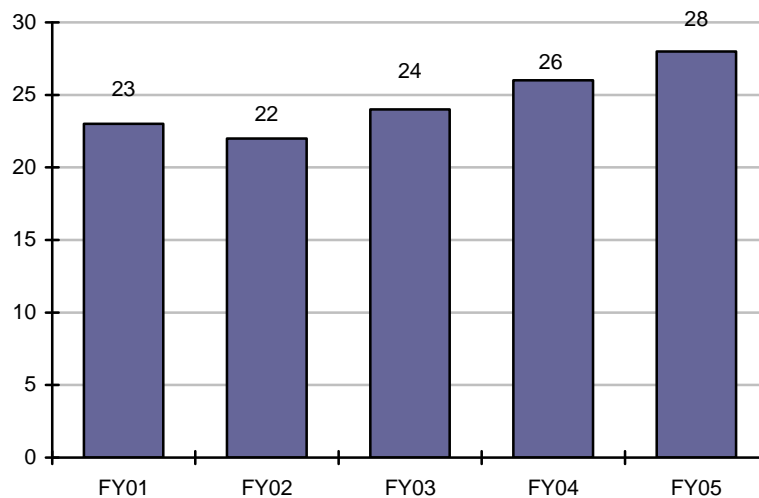


## Professional Employer Organizations

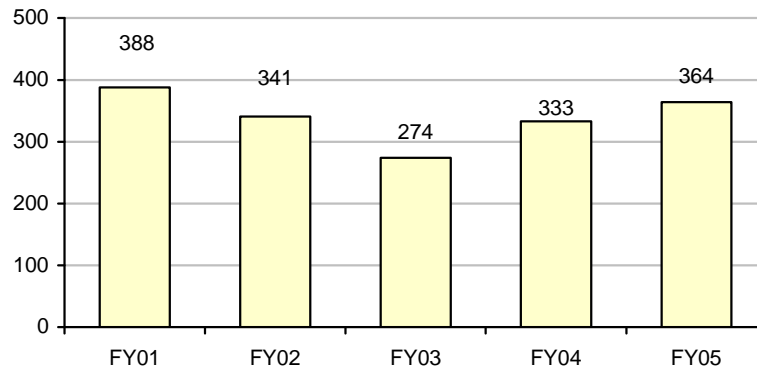
Professional Employer Organizations (PEOs) are required to be licensed by the ERD prior to operating in Montana. A PEO is a business in good standing that contracts with other businesses, providing the businesses with leased employees or most frequently leases all or part of their employees. A PEO manages the paperwork responsibilities associated with having employees. PEO's are to pay employee wages, workers' compensation premiums, payroll-related taxes, and employee benefits from their own account without regard to payments by the client. Thus, PEO's become the employer of record. The client companies in return pay the PEO all employee costs plus an administrative fee. The client company is sometimes termed a co-employer. A client is an employer who obtains all or a part of its workforce through an employee leasing arrangement or a professional employer arrangement, both by contract with a Professional Employer Organization.

In FY05, ERD renewed and maintained 28 PEO licenses. An increasing number of client companies maintained contracts with a PEO in FY05, and through the 364 client companies of record, 2,629 employees were employed.

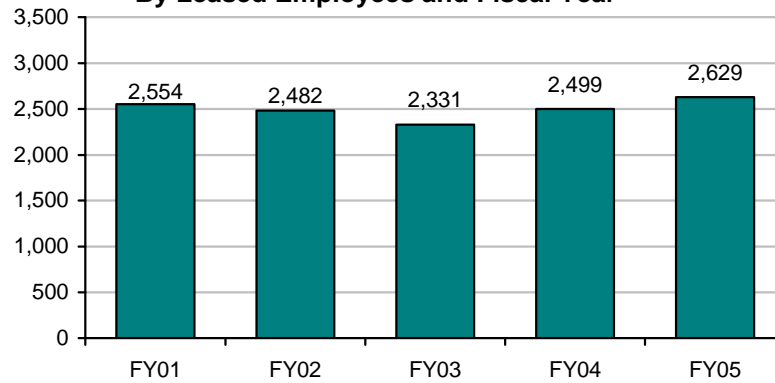
**Exhibit 5.11**  
**Professional Employer Organizations**  
**By Number of Licenses and Fiscal Year**



**Exhibit 5.12**  
**Professional Employer Organizations**  
**By Number of Clients and Fiscal Year**



**Exhibit 5.13**  
**Professional Employer Organizations**  
**By Leased Employees and Fiscal Year**



Data Source: POINTS – (Process Oriented Integrated Tax System, Department of Revenue - Unemployment Insurance Division)